

Exhibit 32

ORIGINAL

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

* * *

RODERICK JENKINS : Index No: CV-110268
:
-VS- :
:
ERIC HOLDER :

* * *

Oral deposition of LAMINE N'DIAYE, held at
the Bureau of Prisons, 2nd and Chestnut Street, 7th
Floor, Philadelphia, Pennsylvania 19106, on Thursday,
February 16, 2011, beginning at 11:00 a.m., before
Loretta Haig, a Shorthand Reporter and Notary Public in
and for the Commonwealth of Pennsylvania.

* * *

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1 Q. Do you recall aside from Mr. Jenkins who
2 else was on that list?

3 MR. ABELL: Don't give out names.

4 THE WITNESS: There were several
5 names from the staff and the institution.

6 BY MS. REHMAN:

7 Q. Do you recall how many names were on that
8 list?

9 A. It would vary.

10 Q. Was there ever a time you received the
11 list and Mr. Jenkins was the only employee on that
12 list?

13 A. No.

14 Q. During the safety meeting, when you
15 discussed Mr. Jenkins, were you informed that Mr.
16 Jenkins suffered a work-related injury?

17 A. Yes.

18 Q. Do you recall who informed you of that?

19 A. I don't think anyone informed me. It was
20 just listed on the status report.

21 Q. Aside from what was listed on the status
22 report, was anything else discussed in relation to
23 Mr. Jenkins at the safety meeting?

24 A. Just the status.

1 Q. And do you recall who generated the status
2 report?

3 A. The safety manager.

4 Q. That would be Mr. Butler?

5 A. Yes.

6 Q. Did you keep copies of these reports?

7 A. No, I didn't.

8 Q. Do you recall if minutes were taken of the
9 safety meetings?

10 A. I don't know if it was minutes, but I know
11 the safety manager doing the report would make
12 comments on it.

13 Q. Do you recall whether or not you ever took
14 any notes at these safety meetings?

15 A. No, I didn't take any notes.

16 Q. And at the intelligence meetings, do you
17 recall whether or not any minutes of the meetings --

18 A. No.

19 MR. ABELL: Objection.

20 BY MS. REHMAN:

21 Q. Do you recall whether or not you took any
22 notes during the intelligence meetings?

23 A. No notes.

24 Q. At any point after your arrival to MCCNY,

1 were you made aware of any discrimination complaints
2 that Mr. Jenkins had made?

3 A. Was I made aware by whom?

4 Q. By anyone.

5 A. Mr. Jenkins had told me.

6 Q. Aside from Mr. Jenkins, was there anyone
7 else who made you aware of complaints Mr. Jenkins
8 had filed?

9 A. No.

10 Q. Do you recall when Mr. Jenkins made you
11 aware of his complaints?

12 A. Probably within a week or two that I had
13 gotten there.

14 Q. Did you have an in-person conversation
15 with Mr. Jenkins?

16 A. Yes.

17 Q. Do you recall where this conversation was
18 held?

19 A. In my office.

20 Q. On the third floor?

21 A. Third floor.

22 Q. Do you recall how long that conversation
23 was?

24 A. I don't know. Maybe -- I don't know a

1 specific time. Maybe 20, 30 minutes.

2 Q. Do you recall what you discussed with Mr.
3 Jenkins during that meeting?

4 A. He discussed his injury and past issues
5 that he had with a previous warden.

6 Q. Do you recall what past issues?

7 A. I guess with his injury and how he was
8 treated.

9 Q. Do you recall what he told you in regards
10 to how he was treated?

11 A. I believe he told me he was injured and
12 then he was made to come back to work.

13 Q. Do you recall discussing anything else
14 with Mr. Jenkins during that conversation?

15 A. I believe we talked about a letter, an
16 anonymous letter.

17 Q. What about an anonymous letter?

18 A. I don't remember the specifics in the
19 allegation, but somebody had, I don't know, mailed a
20 letter or made some allegations against him.

21 Q. And you don't recall what the allegations
22 were?

23 A. I don't remember.

24 Q. Do you recall whether or not he told you

1 that he reported that letter?

2 A. I'm not sure if he said he reported it or
3 not, but I know I took the letter and reported it.

4 Q. Who did you report it to?

5 A. The warden.

6 Q. James Cross?

7 A. Yes.

8 Q. How did you report the letter to James
9 Cross?

10 A. I spoke to him.

11 Q. Did you take the letter to him?

12 A. Yes.

13 Q. On the same day?

14 A. I believe so.

15 Q. What did you tell Mr. Cross?

16 A. I just gave him the letter and said Mr.
17 Jenkins made some allegations.

18 Q. That Mr. Jenkins made some allegations?

19 A. Right.

20 Q. What allegations do you recall --

21 A. I don't recall what the letter -- just in
22 the letter.

23 Q. Do you recall what Mr. Cross responded, if
24 anything?

1 A. No. He just took the letter.

2 Q. Did he say whether or not he was going to
3 investigate the letter?

4 A. No, he didn't.

5 Q. Did you ask him whether or not he was
6 going to investigate the letter?

7 A. No.

8 Q. Do you recall whether or not you ever
9 followed up with Mr. Cross regarding the letter?

10 A. I didn't do any follow-up.

11 Q. Do you recall whether or not you ever
12 asked Mr. Jenkins about the status of that letter?

13 MR. ABELL: Objection.

14 THE WITNESS: I don't understand.

15 BY MS. REHMAN:

16 Q. Do you recall if you ever had a
17 conversation after that with Mr. Jenkins regarding
18 the letter?

19 A. No. I don't recall having a conversation
20 with him.

21 Q. When you reported the letter to Mr. Cross,
22 did Mr. Cross -- do you know whether or not Mr.
23 Cross was already aware of that letter?

24 A. No, I don't.

1 Q. Did Mr. Cross inform you that an
2 investigation was already being conducted regarding
3 that letter?

4 A. No.

5 Q. Aside from Mr. Jenkins informing you about
6 the letter and his disability, do you recall if
7 there was anything else he discussed with you during
8 that conversation?

9 A. I don't recall anything else.

10 Q. Aside from your conversation with Mr.
11 Jenkins, did anybody else inform you about
12 complaints Mr. Jenkins had made?

13 A. No.

14 Q. When you first arrived to MCCNY, were you
15 informed which employees had made complaints of
16 discrimination?

17 A. No.

18 Q. In your capacity as a captain at the BOP,
19 have you disciplined employees?

20 MR. ABELL: Objection.

21 THE WITNESS: I didn't understand.

22 Discipline, what do you mean?

23 BY MS. REHMAN:

24 Q. Have you ever issued discipline against an

1 phone. I'm not sure.

2 Q. Do you recall what she said to you?

3 A. She just told me she had a proposal letter
4 for Mr. Jenkins that needed to be issued.

5 Q. Prior to Ms. Messum telling you that she
6 had a proposal letter that needed to be issued, were
7 you aware that there was going to be a proposal for
8 Mr. Jenkins' termination?

9 A. I knew the investigation had been
10 completed and it was in HR for their disposition.

11 Q. What do you mean by disposition?

12 A. Like what -- you know, deciding what --
13 the review process, what they were going to do with
14 it.

15 Q. How did you learn that the investigation
16 was completed?

17 A. During the status meetings.

18 Q. Do you recall how long after the status
19 meeting in which you were informed that the
20 investigation was completed, how long was that after
21 Ms. Messum contacted you?

22 A. I don't know.

23 Q. During the status meeting, when you were
24 informed that the investigation was completed, were

1 you informed what the discipline would be?

2 A. No.

3 Q. When Ms. Messum initially contacted you,
4 did she tell you what the discipline was?

5 A. No, she didn't.

6 Q. When did you first learn of what the
7 discipline was?

8 A. When I went to review the form.

9 Q. Do you recall the day that Ms. Messum
10 initially contacted you was the day you received the
11 proposal letter?

12 MR. ABELL: Objection.

13 THE WITNESS: I really can't
14 remember, but it might have been.

15 BY MS. REHMAN:

16 Q. Okay. Do you recall whether or not Ms.
17 Messum physically handed you the proposal letter and
18 a copy?

19 A. Yeah, I was physically handed.

20 Q. Aside from the two copies of the letter,
21 was there anything else that you were handed?

22 A. No.

23 Q. And you were handed the letter by Ms.
24 Messum?

1 A. I believe so.

2 Q. When she handed you the letter, do you
3 recall whether or not she said anything else to you?

4 A. She might have said make sure, you know,
5 two copies are signed and that the employee gets a
6 copy.

7 Q. And the other copy -- one goes to the
8 employee and one was for HR?

9 A. Goes back to HR.

10 Q. Did you read the letter in front of Ms.
11 Messum?

12 A. I'm not sure if I did it there or went in
13 an office and read it.

14 Q. When you first learned that the proposal
15 was for Mr. Jenkins termination, was it --

16 A. Uh-huh.

17 Q. -- were you shocked?

18 A. I wouldn't say I was shocked. This is
19 what I had to do.

20 Q. Did you have any opinion regarding the
21 proposal?

22 A. No.

23 Q. Were you surprised?

24 MR. ABELL: Objection. Asked and

1 answered.

2 THE WITNESS: No. Because it was
3 already investigated, so I didn't know the
4 specifics of the investigation.

5 BY MS. REHMAN:

6 Q. Did you ever try finding out the specifics
7 of the investigation?

8 A. No.

9 Q. What did you do after you read the letter?

10 A. Read the letter and I believe I contacted
11 Mr. Jenkins and issued the letter.

12 Q. Do you recall whether or not you called
13 Mr. Jenkins the same day?

14 A. It might have been the same day. I'm not
15 specific on that.

16 Q. Do you recall what you told Mr. Jenkins
17 when you contacted him?

18 A. I believe I told him that I had a proposal
19 letter to issue to him.

20 Q. Did you tell him what the proposal letter
21 stated?

22 A. Not over the phone. In person.

23 Q. Did you meet with Mr. Jenkins in person?

24 A. Yes, I did.

1 Q. Regarding the proposal letter?

2 A. Yes, I did.

3 Q. Do you recall how long the meeting was
4 with you and Mr. Jenkins when you were issuing him
5 the proposal letter?

6 A. I recall we issued it, then we went over
7 to the personnel department. Might have been,
8 between all the movement, about 20 minutes.

9 Q. I'm sorry, you said you issued it and went
10 over to the personnel office?

11 A. Right.

12 Q. Why did you go over to the personnel
13 office?

14 A. Mr. Jenkins had refused to sign the
15 proposal letter.

16 Q. You went to the personnel office with Mr.
17 Jenkins?

18 A. Yes.

19 Q. Prior to that, you met him in your office?

20 A. No. We were on the first floor. There
21 was an office on the first floor.

22 Q. When Mr. Jenkins first arrived in the
23 office on the first floor, what did you tell him
24 prior to giving him the letter?

1 A. I explained to him that I had a proposal
2 letter to issue him and for him to read it and sign
3 it.

4 Q. Did you explain the contents of the letter
5 to him at all?

6 A. Well, I explained that it was a proposal
7 letter. Again, that it was a proposal and, you
8 know, he'd have to set up a meeting with the warden
9 for his written and oral response.

10 Q. Do you recall if Mr. Jenkins said anything
11 after reading the letter?

12 A. I believe he said he wasn't signing it,
13 you know, his case was in court and his lawyers
14 would handle it.

15 Q. Aside from that, do you recall him saying
16 anything else?

17 A. I think he said something and I then
18 explained to him, you know, that he's entitled to
19 documents from the investigation.

20 Q. I'm sorry?

21 A. I explained to him that he's entitled to
22 certain documents and to get with the HR department
23 so he can use it in his oral and written response to
24 the warden.

1 Q. Do you recall saying anything else to Mr.
2 Mr. Jenkins?

3 A. I don't recall.

4 Q. Did you want Mr. Mr. Jenkins to write a
5 written response to the warden?

6 MR. ABELL: Objection.

7 THE WITNESS: That wasn't my
8 decision.

9 BY MS. REHMAN:

10 Q. I understand it wasn't your decision.
11 What was your opinion?

12 MR. ABELL: Objection.

13 THE WITNESS: I didn't have an
14 opinion.

15 * * *

16 (Whereupon at this time Exhibit
17 N'Diaye-1 was marked for identification by
18 the court reporter.)

19 * * *

20 BY MS. REHMAN:

21 Q. Mr. N'Diaye, you've been handed what's
22 been marked as N'Diaye Exhibit 1. It's Bates
23 stamped 251 and goes to 254Jenkins. It's a
24 four-page document. You can take a couple minutes

C E R T I F I C A T E

I, LORETTA HAIG, a Shorthand Reporter in and for the Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of the deposition of said witness who was first duly sworn by me on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

LORETTA HAIG
SHORTHAND REPORTER
AND NOTARY PUBLIC

CERTIFICATE OF DEPONENT

I, LAMINE N'DIAYE, have read the foregoing transcript of my testimony taken on February 16, 2012, contained within pages 1 to 91, and it is true, correct, and complete to the best of my knowledge, recollection, and belief, except for the list of corrections, if any, attached on a separate sheet herewith.

DATE

LAMINE N'DIAYE